

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

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|--------------------------------------|---|----------------------------|
| LIBERTY FRUIT COMPANY, INC., et al., |) | |
| |) | |
| |) | |
| Plaintiffs, |) | |
| vs. |) | Case No. 05-6006-CV-SJ-FJG |
| |) | |
| NU-WAY PRODUCE COMPANY, |) | |
| INC., et al., |) | |
| Defendants. |) | |

ORDER

Pending in this matter is plaintiffs' brief in support of the type and amount of damages sought (Doc. No. 33).

On October 19, 2005, this Court entered a default judgment in favor of plaintiffs and against defendant Kevin Schwede, the only defendant remaining in this matter. See Doc. No. 31. In order to determine damages and expedite closure of this case, the Court directed plaintiffs to provide to the Court on or before November 4, 2005, a brief regarding the type and amount of damages they seek. The Court directed defendant Schwede to file his response to plaintiffs' briefing regarding damages on or before November 18, 2005. Plaintiffs timely filed their brief in support of damages; however, to-date defendant Schwede has not filed a response to plaintiffs' brief in support of damages.

Plaintiff Liberty Fruit Co., Inc., seeks the entry of a final default judgment in its favor in the principal amount of \$20,191.56, plus prejudgment interest in the amount of \$7,974.73 and attorneys fees in the amount of \$11,493.77, for a total of \$39,660.06. Plaintiff ACA, Inc. d/b/a Carol's Cuts seeks the entry of a final default judgment in its favor in the principal amount of \$4,962.25, plus prejudgment interest in the amount of \$999.61, for a total of

\$5,961.86.

For the reasons stated at pp. 2-4 of plaintiffs' brief (Doc. No. 33) and the exhibits thereto, the Court finds that the principal amounts of \$20,191.56 as to plaintiff Liberty Fruit Co., Inc. and \$4,962.26 as to plaintiff ACA, Inc. d/b/a Carol's Cuts, are appropriate. Furthermore, pre-judgment interest is appropriately awarded to plaintiffs, as discussed at pp. 4-7 of plaintiffs' brief (Doc. No. 33). ACA, Inc. d/b/a Carol's Cuts is awarded pre-judgment interest at the rate of 9% per annum, of which \$999.61 had accrued through November 4, 2005. Pursuant to the provision regarding interest and attorneys' fees on its invoices, Liberty Fruit Co., Inc. is awarded pre-judgment interest and attorneys' fees of 24% per annum, of which \$7,974.73 had accrued through November 4, 2005.¹

Plaintiff Liberty Fruit Co., Inc. also requests additional costs and attorneys fees. As the Court finds that plaintiff's reasonable attorney's fees are included within the 24% interest requested above, plaintiff Liberty Fruit Co., Inc.'s request for additional attorneys' fees is **DENIED**.

Therefore, for all the foregoing reasons, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

- 1) Plaintiff Liberty Fruit Co., Inc. is awarded final judgment against defendant Kevin

¹Missouri's usury statute provides that parties may agree to an interest rate not exceeding ten percent per annum, or the prevailing "market rate." See R.S.Mo. § 408.030. There are certain exceptions to this statute; however, plaintiff has not indicated that any of these exceptions apply. However, the Court finds that an award of pre-judgment interest in the amount of 9% pursuant to R.S.Mo. § 408.040 is appropriate. The Court further notes that R.S.Mo. § 408.092 provides that attorneys' fees are permitted to enforce a credit agreement, provided that such fees do not exceed fifteen percent of the outstanding credit balance in default. As the sum of the prejudgment interest [9%] and permissible attorneys fees [15%] amounts to 24%, the Court will award that sum to plaintiff Liberty Fruit Co., Inc.

Schwede in the amount of \$20,191.56, plus pre-judgment interest and attorneys fees in the amount of \$7,974.73; and

- 2) Plaintiff ACA, Inc. d/b/a Carol's Cuts is awarded final judgment against defendant Kevin Schwede in the amount of \$4,962.25, plus pre-judgment interest in the amount of \$999.61.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this Order by regular and certified mail to defendant at his last known address:

Kevin V. Schwede
9608 W. 123rd Street
Overland Park, KS 66213

IT IS SO ORDERED.

/s/Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: March 8, 2006
Kansas City, Missouri